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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1039

XENO W. PUTNAM and BESSIE L. PUTNAM,
Petitioners,

vs.

FEDERAL LAND BANK OF BALTIMORE.
Respondent.

PETITION.

For A Writ of Certiorari
To the Supreme Court of Pennsylvania.

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Lima, Ohio,
February 14, 1945.

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(The brief in support of this petition begins at page 13.)

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

A Summary Statement of the Matter Involved.

The Federal Statute.

The case arises out of Section 75 of the Bankruptcy Act, 11 U. S. C. 203, which relates to proceedings for the rehabilitation of farmer debtors. The portion of the statute which is most particularly involved is Section 75 (n) and (p).

The Constitution.

Article I, Section 8, Clause 4 of the Constitution, which gives power to the Congress to legislate on the subject of bankruptcies, also Article VI, clauses 2 and 3, which make the Constitution and the laws of the United States passed in pursuance thereof the Supreme Law of the Land binding on all state Constitutions and laws and upon all federal and state officers, are involved.

The Statutes of the State of Pennsylvania.

The Statute of the State of Pennsylvania pursuant to which an order to deliver possession was entered by the Common Pleas Court of Crawford County, Pennsylvania, is the Act of April 20, 1905, P. L. 239, Section 1, which is the official citation to said Statute. A sale in foreclosure by the same court was under the Act of 1705, 1 Sm. L. 57, Section 6, which is the official citation thereto.

The Nature of the Case.

The case is one in which the Court of Common Pleas of Crawford County, Pennsylvania, maintained and car-

ried on foreclosure proceedings against the farm of the appellants—one of whom was a farmer debtor under Section 75 of the Bankruptcy Act, 11 U. S. C. 203—while the jurisdiction over the subject matter and the person were exclusively in the United States District Court. The said state court proceedings which were so maintained while that court had no jurisdiction, consisted of a sale in foreclosure and a subsequent order for possession both to the mortgage holder who is respondent herein.

The Issue.

The issue is a federal question involving the Constitution and the statute law of the United States and the statute law of the State of Pennsylvania.

Specifically, the question is whether a state court may proceed in the foreclosure of a mortgage on the farm of a farmer debtor while he has pending in the bankruptcy court his farmer debtor proceeding under Section 75 of the Bankruptcy Act.

The Decision Below.

The decision of the State Court of Pennsylvania is not officially published.

it will be found in the record as certified by the Prothonotary of that court.

II.

Statement of the Basis of the Jurisdiction of This Court.

The jurisdiction of this court is conferred by Section 237 (b) of the Judicial Code; 28 U. S. C. 344 (b).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The judgment of the court below became final on November 27, 1934, when a petition for rehearing was denied. Such a petition for rehearing is by the rules of the Supreme Court of Pennsylvania required to be filed before a petition for appeal to this court may be presented. This petition for certiorari is filed within three months after the denial of the petition for rehearing.

How the Federal Question was Raised and Disposed of.

In Court of First Instance, the Court of Common Pleas.

In the answer to the respondent's Petition for Possession in the Court of Common Pleas, the petitioners alleged the filing of the farmer debtor petition of Bessie L. Putnam in the United Stafes District Court on September 10, 1936, and its approval (R. 78a, next to the last paragraph) and quoted and also incorporated the certificates of the Clerk of the United States District Court, showing that such farmer debtor petition was so filed on September 10, 1936, and was still pending. R. 79a, also Exhibits "A", "B" and "C" attached to the petition at R. 91a to 93a.

The Statutory provisions of Section 75 putting exclusive jurisdiction in the federal court and the decision of the court in *Kalb* v. *Feuerstein*, (1940) 308 U. S. 443, were quoted. R. 79a and 98a.

The nullity of the second sheriff's sale of September 15, 1939 (R. 9a) because of the pendency of the farmer debtor

proceedings instituted on September 10, 1936, was pleaded in the answer at R. 82a, bottom of page; at R. 83a, R. 85a; and also at other places throughout the answer which continues to R. 93a.

The Opinion of the Court of Common Pleas.

The opinion of the Court of Common Pleas recognized that the issue was solely one of jurisdiction. The opinion said:

> "After a careful examination of the pleadings, we are clearly of the opinion that the issue now raised is one of jurisdiction in the state court to make the sheriff's sale under which the petitioner claims title and right of possession, valid." R. 98a, last paragraph on page.

The Court of Common Pleas rested its decision upon the erroneous assertion that that court having previously held it had jurisdiction, the matter was settled by the doctrine of *res judicata*, and cited various decisions of the Pennsylvania state courts in its support.

It also erroneously held that the federal courts had dismissed the farmer debtor petition, whereas it had merely denied an application for appraisal, leaving the proceedings still pending and the exclusive federal jurisdiction still extant, as proved by the certificates of the Clerk of the Federal Court which were attached to the petitioner's answer as Exhibit "A", "B" and "C" and set out at R. 91a to 93a.

The decision and order of the Court of Common Pleas (93a to 105a) were based entirely on the pleadings which were (1) the Petition for Possession (R. 72a to 75a), and (2) the Answer thereto. (R. 77a to 93a.) In the words

of the Order for Possession, it was issued on the petition therefor "for want of a sufficient answer by defendants." R. 104a.

In the Supreme Court of Pennsylvania.

In the State Supreme Court, the petitioners again raised the federal question at their first opportunity.

In their "Statement of the Question Involved," they raised it in their Brief as follows:

> "Did the Common Pleas Court have jurisdiction over the person of the subject matter so as to have power to issue the order granting to the Federal Land Bank the right of possession of the farm of the defendants-appellants or to conduct the sheriff's sale in foreclosure proceeding that order."

They also raised the federal question in the State Supreme Court in their Assignment of Errors, which was incorporated in their Brief. They alleged that the Court of Common Pleas erred:

1. In holding that the State Court had jurisdiction to make the sheriff's sale, citing that court's opinion at R. 93a and R. 102a.

2. In holding that the question of jurisdiction of the state court is *res judicata*, citing the opinion at R. 99a, R. 100a and R. 102a;

3. In answering in the negative the question whether in possession proceedings instituted by a purchaser at sheriff's sale the defendant may again raise the question of jurisdiction which was likewise raised and decided against him in a petition to have the sale nullified and not appealed; citing the opinion at R. 100a.

4. In holding that the United States Court had divested itself of its exclusive jurisdiction over Bessie L. Putnam and her property, citing R. 102a and R. 103a.

The Opinion of the Supreme Court of Pennsylvania.

The opinion of the Supreme Court of Pennsylvania recognized the federal question as the only issue in the case and disposed of it by affirming the Court of Common Pleas.

In the 2nd and 3rd paragraphs of the opinion it said:

> "The answer filed admitted all of the facts except ownership by the Federal Land Bank of Baltimore, alleging that on September 10, 1936, Bessie L. Putnam filed in the United States District Court for the Western District of Pennsylvania, a petition under the Frazier-Lemke Amendment to the Bankruptcy Act, Section 75, Subsection (s), and that on July 2, 1942, and October 19, 1942, she was informed by the clerk of courts that the case was still pending."
>
> "The appellants state the sole question involved in this appeal to be 'Did the Common Pleas Court have jurisdiction over the person or of the subject matter so as to have power to issue the order granting to the Federal Land Bank the right of possession of the farm of the defendants-appellants or to conduct the sheriff's sale in foreclosure preceding that order.'"

It quoted the statement in the opinion of the court below that the issue of jurisdiction had theretofore been raised and decided adversely to the petitioners, and therefore, it said the issue was *res judicata.*

It quoted from an opinion of the United States District Court dismissing the farmer debtor petition of Xeno W. Putnam filed after the farmer debtor petition of Bessie L. Putnam was filed in which the United States District Court held that having once before dismissed a farmer

debtor petition which he had filed, he could not file another. That conclusion was founded on the assumption that the former dismissal was *res judicata*, so that another farmer debtor petition could not be filed. The conclusion was erroneous. *Wragg* v. *Federal*, 1943, 317 U. S. 325.

The Supreme Court of Pennsylvania like the Court of Common Pleas erroneously held that the denial of Bessie L. Putnam's petition for appraisal was a dismissal of her proceeding. That holding contradicted the certificates of the Clerk of the United States District Court in Exhibits "A", "B" and "C", at Record 91a to 93a, which assert that the farmer debtor case is still pending in the Federal Court.

The opinion also erroneously assumed that Bessie L. Putnam's farmer debtor proceeding had been once dismissed and thereafter reinstated. Said assumption is not supported by the record and is contrary to the facts. Upon that false presumption the State Supreme Court then proceeded to support its contention by quoting from the decision of this court in *Union Central* v. *Byerly*, (1940) 310 U. S. 1, in which the issue grew out of the action of a state court which took place in an interim between the dismissal of a farmer debtor proceeding, because this court had held the original section 75 (s) to be unconstitutional, and its subsequent reinstatement after the enactment of the present Section 75 (s). Such a state of facts never existed in the instant Putnam case.

It also grounded its conclusion of *res judicata* upon decisions of the Pennsylvania State Courts which were not applicable to conflicts between state and federal jurisdiction.

It also cited *Chicot* v. *Baxter*, 308 U. S. 371, a case under the first municipal debtor law which arose out of an entirely different situation. In that case there was no issue of conflicting, concurrent or exclusive jurisdiction in another court, state or federal. The municipal debtor statute under which the court fully administered the Chicot case to the final determination of all issues, was accepted by all parties and the orders of the court were fully complied with. Thereafter, this court in a case from another state declared the municipal debtor law as enacted to be unconstitutional. The precise question before the court then was, what efficacy was to be given to the orders of the court under the statute, accepted by all parties as constitutional, after the orders had been obeyed. That question, this court said, must be answered by regarding all of the acts of the court as the final determination of the case, as all parties had regarded them to be.

The statute (Sec. 75) placing exclusive jurisdiction in the United States Court and completely extinguishing the jurisdiction of the state court, has been at all times a constitutional enactment. The question in the Chicot case never arose in the Putnam case.

Thus the only issue before the state courts in this case was that of the force and validity of a statute of the United States. That issue was decided adversely to the federal law.

III.

The Question Submitted.

The question involved is whether a state court may maintain a foreclosure proceeding against a farmer debtor and his farm while there is pending in the federal court his farmer debtor proceeding under Section 75 of the Bankruptcy Act, 11 U. S. C. Section 203, there having been no compliance with Section 75 (o), 11 U. S. C. 203 (o).

The question is substantial because, if these decisions of the state courts are not reversed, Section 75 (a), (o) and (p) of the Bankruptcy Act are not the supreme law of the land, but the foreclosure statutes of the State of Pennsylvania override Section 75, and thereby the provisions of Article VI that the Constitution and Laws of the United States made under it, are the Supreme Law of the Land, and that the judges in every state shall be bound thereby notwithstanding any contrary state law, are corrupted.

IV.

Reasons Relied Upon for Allowance of a Writ of Certiorari.

1.

The decisions below involve a question of great importance in the administration of an act of Congress whose purpose is the rehabilitation of farmer debtors. Section 75 of the Bankruptcy Act. 11 U. S. C. 203.

2.

The decisions below violate Article I, Section 8, Clause 4, of the Constitution, which provides that:

> "The Congress shall have power . . . to establish . . . uniform laws on the subject of Bankruptcies throughout the United States."

3.

The decisions below violate Article VI, Clauses 2 and 3, of the Constitution, which provide that:

> "This Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding. . . . All executive or judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution. . . ."

4.

The decisions below violate Section 75 (n), (o) and (p), 11 U. S. C. 203 (n), (o), and (p), and are contrary to the entire structure of Section 75, 11 U. S. C. 203.

5.

The decisions below are in direct conflict with the decisions of this Court in *Kalb* v. *Feuerstein*, 308 U. S. 133, and *Wright* v. *Union Central*, 304 U. S. 433.

6.

The farmer debtor proceeding referred to was continuously pending in the Federal Court from its initial filing through all the subsequent state proceedings. R. 92a, Exhibit "B" and Exhibit "C".

The state court proceedings so conducted were in contravention of the federal court's jurisdiction, and were therefore nullities by one or more of sections 75 (n), (o), and (p) of the Bankruptcy Act; 11 U. S. C., 203 (n), (o) and (p), as adjudicated in *Kalb* v. *Feuerstein*, 1940, 308 U. S. 433, and *Wright* v. *Union Central*, 1938, 304 U. S. 502.

The state court proceedings which were void were:

(1) Sales in foreclosure, R. 6a, top of page, and R. 9a, middle of page; (the first one was set aside by the State Court itself, R. 25a, order dated March 3, 1938, at bottom of page.)

(2) A Sheriff's deed to the mortgagee-purchaser, the present respondent, R. 10a, entry of September 3, 1940; and

(3) The Order of Possession to the mortgagee-purchaser, which is the subject of this appeal, R. 104a.

Wherefore your petitioners pray that a proper writ of certiorari may issue to the Supreme Court of the State of Pennsylvania, so that this cause may be determined by this court and for all other relief as may be proper.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
Counsel for the Petitioners.

Lima, Ohio,
February 14, 1945.

BRIEF.

In Support of the Preceding Petition for Certiorari.

Note: The Index precedes the petition for certiorari.

I.

The Opinion Below.

The opinion of the Supreme Court of Pennsylvania has not been officially reported. It appears in full in the proceedings certified of this court by the Prothonotary of that Court.

II.

Grounds upon which the Jurisdiction of the Court is Invoked.

The basis for the jurisdiction of this court has been set out at pages 3 and 4 of the preceding petition for certiorari.

III.

Statement of the Case.

How and When the Federal Question was Raised.

The Federal Land Bank of Baltimore, filed in the Court of Common Pleas of Crawford County, Pennsylvania, its

petition for possession of the petitioners' farm of 185 acres, based upon the foreclosure of its mortgage judgment for $4464.04, and sale of the farm to it for $465.00 at Sheriff's sale. This petition was filed September 28, 1942, Record 72a. The filing date is shown at the bottom of Record 76a. The petitioners filed their answer in which they showed that the State Court had no jurisdiction because of the exclusive jurisdiction of the United States Court which jurisdiction had existed prior to the foreclosure sale, which continuously existed, and which so continued to exist in the federal court until long after the Petition for Possession was filed, thus making that sale a nullity. The petitioners said answer was filed December 7, 1942. Record 77a. The filing date is shown at the top of Record 91a. See the Certificates of the Clerk of the United States District Court at Record 16a, Exhibit "B", at Record 91a, Exhibit "A", and at Record 92a, Exhibit "B" and Exhibit "C", which show the federal jurisdiction still existed on October 19, 1942, that is, long after the Petition for Possession was filed. These exhibits were incorporated in the answer of the petitioners, and the court heard and determined the Petition for Possession upon the petition and answer, and nothing else. No evidence was presented, the pleadings being taken as stating the facts upon which the Order for Possession appealed from was based.

The "Order for Possession" entered by the Common Pleas Court was appealed to the Supreme Court of Pennsylvania, and affirmed. It is this order of affirmance which is the subject of this petition for certiorari.

The federal question was again raised in the Supreme Court of Pennsylvania in the petitioners' "Statement of the Questions Involved", and in the "Assignment of Er-

rors," at pages 1 and 4 of their "Brief for Defendants-Appellants,"—that being the method of stating and raising questions on appeal to the Supreme Court of Pennsylvania. They again, by leave of court at argument, restated and amplified their Assignments of Error in their "Amended Assignments of Error," filed shortly after argument, and long before the final decision of the court was rendered. The Federal question was also raised in the "Brief of Appellants" at pages 5 to 20 of their twenty-one page brief.

IV.

Specification of Errors.

The Supreme Court of Pennsylvania erred:

1. In holding that the State Court had jurisdiction to make the Sheriff's sale.

2. In holding that the State Court had jurisdiction to grant an Order for Possession to the purchaser at the Sheriff's sale.

3. In holding that the question of the jurisdiction of the State Court is *res judicata*.

4. In holding that in a possession proceeding by a purchaser at a Sheriff's sale in foreclosure, the defendant in the foreclosure proceeding may not then again raise the question that exclusive jurisdiction was in the Federal Court when the sale in foreclosure was held and when the petition for possession was filed and granted, if said question was decided adversely to the defendant in his applica-

tion to have the sale set aside and vacated, and the defendant took no appeal from such adverse decision.

5. In holding that if a State Court once in a proceeding decides that it has jurisdiction as against the claim that jurisdiction is exclusively in the Federal Court, and that therefore the State Court has no power, such decision is not subject to collateral attack.

6. In holding that the United States Bankruptcy Court had divested itself of its exclusive jurisdiction over the person and property of Bessie L. Putnam.

7. In holding that when the Federal Land Bank of Baltimore filed its petition for possession, it was the owner of the farm of which it sought possession.

V.

Summary of the Argument.

1.

While a farmer debtor proceeding is pending in a federal court and Section 75 (o), 11 U. S. C. 203 (o), has not been complied with, a state court has no power to proceed with, or maintain, any action in foreclosure or for possession of the land of the farmer debtor.

2.

A holding by a state court that it has such power cannot become *res judicata* and such holding may be collaterally attacked.

VI.

Argument.

On April 6, 1935, the Court of Common Pleas of Crawford County, Pennsylvania, rendered a judgment in foreclosure against the petitioners, Xeno W. Putnam and Bessie L. Putnam, in a proceeding known as *scire facias sur mortgage*, in the sum of $5564.04 against their 165 acre farm, R. 1a.

Thereafter, on September 10, 1936, Bessie L. Putnam instituted her farmer debtor proceeding under Section 75 of the Bankruptcy Act; 11 U. S. C., 203, by filing her farmer debtor petition which was approved on September 11, 1936, R. 91a, Exhibit "A", R. 116a, Exhibit "B". That proceeding is still pending. R. 92a, Exhibits "B" and "C".

The filing of the farmer debtor petition deprived the state courts of all jurisdiction over the person and property of the farmer debtor, which included her interest in said farm, as is shown by the following references to the farmer debtor law:

Section 75 (n) of the Bankruptcy Act; 11 U. S. C. 203 (n), provides that the filing of his petition immediately subjects the farmer debtor and all his property to the exclusive jurisdiction of the United States Court, including all real property and every equity or right in such property where the sale in foreclosure has not been confirmed or deed has not been delivered.

Sec. 75 (o) of the Bankruptcy Act; 11 U. S. C. 203 (o), provides that no proceeding in foreclosure which is pend-

ing at the time of the filing of a farmer debtor petition shall thereafter be maintained.

Sec. 75 (p) of the Bankruptcy Act; 11 U. S. C. 203 (p), provides that all of the farmer debtor's property shall be under the sole jurisdiction of the Federal Court as provided for in said Section 75.

These sections of the Bankruptcy Act have been fully sustained by this court. See:

Kalb v. *Feuerstein*, 308 U. S. 433;
Wright v. *Union Central*, 304 U. S. 502.

The farmer debtor proceeding referred to was continuously pending in the Federal Court from its initial filing through all the subsequent state court proceedings. R. 92a, Exhibit "B" and Exhibit "C".

The state court proceedings so conducted were in contravention of the federal court's jurisdiction, and were therefore nullities by one or more of sections 75 (n), (o), and (p) of the Bankruptcy Act; 11 U. S. C., 203 (n), (o) and (p), as adjudicated in *Kalb* v. *Feuerstein*, 1940, 308 U. S. 433, and *Wright* v. *Union Central*, 1938, 304 U. S. 502.

The state court proceedings which were void were:

(1) Sales in foreclosure, R. 6a, top of page, and R. 9a, middle of page (The first one was set aside by the state court itself, R. 25a, Order dated March 3, 1938, at bottom of page);

(2) A sheriff's deed to the mortgagee-purchaser, the present appellee, R. 10a, entry of September 3, 1940; and

(3) The Order of Possession to the mortgagee-purchaser, which is the subject of this appeal, R. 104a.

The state court of first instance, that is, the Court of Common Pleas of Crawford County, Pennsylvania, said in the opinion of the court that:

> "After a careful examination of the pleadings, we are clearly of the opinion that the issue now raised is one of the jurisdiction of the state court to make the Sheriff's sale, under which the petitioner claimed title and right of possession, valid." R. 99a, last paragraph on the page.

The same state court of the first instance further held that the fact that it had previously in the same foreclosure held that the foreclosure sale was valid, precluded the jurisdiction being questioned by collateral attack, under the doctrine of *res judicata*. That it could not thus validate its void action, taken in the complete absence of jurisdiction over person and subject matter, is a clear and long standing principle of law. A few cases are here cited to illustrate the point.

In a recent case, directly involving the subject of the absence of power in a state court during the pendency of a farmer debtor proceeding in a federal court, this court said, *Kalb* v. *Feuerstein*, 308 U. S. 433, 438:

> "The action of the Walworth county court was not merely erroneous but was beyond its power, void subject to collateral attack, and the determination whether

the Act did so operate is a construction of that Act and a federal question."

The opinion of this court in the Kalb case concluded at page 444 by saying:

"Congress manifested its intention that the issue of jurisdiction in the federal court need not be contested or even raised by the distressed farmer debtor." . . . "and considerations as to whether the issue of jurisdiction was actually contested in the county court, or whether it could have been contested, are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act."

Thompson v. *Tolmie*, (1829), 27 U. S. (2 Pet.) 157, 163.

"If there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right, and afford no jurisdiction, and may be rejected when collaterally drawn in question."

In *Voorhees* v. *Jackson*, (1836), 35 U. S. (10 Pet.) 449, this said of itself, at page 474, of the opinion:

"If not warranted by the Constitution or the law of the land, our most solemn proceedings can confer no right which is denied to any judicial set under color of law, which can properly be deemed to have been done coram non judice; that is, by persons assuming the judicial function in the given case without lawful authority."

Gantly v. *Ewing* (1845), 44 U. S. (3 How.), 707, 713, 714, 715. The law of Indiana provided that before real estate could be sold upon execution the rents and profits must first be offered. The real estate was sold by the sheriff without first offering the rents and profits. This court held the sale to be utterly void. In answer to the argument of the unlucky purchaser (who was a stranger to the case) that he had no notice of the failure to first offer the rents and profits, the court said:

"This is a question of power and the answer to the suggestion rests on this: The Sheriff's duties are plainly prescribed; if he has no *power* to sell, want of knowledge on the part of the purchaser could not confer it, and no such contingency can be let in to help his deed."

Williamson v. *Barry* (1850), 49 U. S. (8 How.) 495, 501.

"But if it [a court] act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers. This distinction runs through all the cases on the subject."

Page 543:

"The operation of every judgment depends upon the jurisdiction of the court to render it. Though there may be jurisdiction for certain purposes in a cause, that jurisdiction may be exceeded in the judgment. And whenever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defense in another court, the jurisdiction of the former may be inquired into."

Mitchell v. *Maxent* (1866), 41 U. S. (4 Wall.) 237.

"Void process confers no right on an officer to sell property, and all acts done under it are absolute nullities."

Gaines v. *New Orleans* (1868), 73 U. S. (6 Wall.) 642.

"Where sales are irregular, but those who bought the property did it in good faith, and without notice, they are not protected except by the bar of time prescribed by the law."

The same principle was recognized by this court in

Wright v. *Union Central* (1938), 304 U. S. 502, where, as stated in the opinion at page 507:

> "A further aspect of the controversy between the petitioner and respondent may be noted. On September 13, 1935, prior to the debtor's filing of an amended petition, under Section 75 (a) as amended, respondent instituted an action in the state court for possession of the 80.31 acres.
>
> A judgment overruling a defense grounded on the bankruptcy proceedings and awarding possession and damages to respondent, was affirmed by the Supreme Court of Indiana, on April 2, 1937. *Wright* v. *Union Central*, 7 N. E. 2nd 206. A similar judgment with respect to the rest of the land was affirmed October 26, 1937. *Wright* v. *Union Central*, Ind. Sup. 10 N. E. 2nd 726."

The proceedings and orders of the Indiana state courts in the Wright case were not appealed to this court, nor was a writ of certiorari sought, yet they were not *res judicata*. They were subject, in an independent and altogether separate federal court proceeding, to the superior and exclusive jurisdiction of the United States Bankruptcy court under the same farmer debtor statute (Sec. 75 of the Bankruptcy Act; 11 U. S. C. 203) which is involved in this appeal.

Precisely like the Pennsylvania courts in this case, the Indiana state courts had awarded possession to the mortgagee-purchaser, which later became respondent in the United States Court proceedings when it wound up in this court as *Wright* v. *Union Central*, (1938), 304 U. S. 502. This court did not hesitate to entertain the collateral attacks on the judgments of the Indiana state courts and repudiate them.

This present Putnam appeal case is a stronger case than

the Indiana instance because here the farmer debtors seek a review of the Pennsylvania state court order by the United States Supreme Court, whereas no review of the Indiana state court's final orders was ever sought.

In short, "*res judicata*" is not applicable to an order issued by a court which had no jurisdiction over person or property to enter it. Such an order is a nullity because there is no **POWER** to issue it.

The question involved is substantial because, if these decisions of the state courts are not reversed, Section 75 (n), (o), and (p) of the Bankruptcy Act are not the supreme law of the land, but the foreclosure statutes of the State of Pennsylvania override Section 75, and thereby the provisions of Article VI that the Constitution and Laws of the United States made under it, are the Supreme Law of the Land, and that the judges in every state shall be bound thereby, notwithstanding any contrary state law, are corrupted.

Conclusion.

The force and validity of Section 75 of the Bankruptcy Act, 11 U. S. C., 203, were drawn in question as the sole issue, both in the court of first instance and in the higher court of the state, and the decision of both courts was against them.

The force and validity of the statutes of the State of Pennsylvania, namely, The Act of 1705, 1 Sm L. 57, Sec.

6 (Smith Laws, relating to sales in foreclosure, and the Act of April 20, 1905, P. L., 239, Sec. 1, relating to orders placing purchasers at foreclosure sales in possession, were likewise drawn in question in both courts, and in both courts the force and validity of the state statutes were upheld against the statute of the United States.

Thereby, the courts below disposed of important federal questions in a manner conflicting with the statutes and with the Constitution of the United States and in conflict with the applicable decisions of this court, and in doing so radically departed from the accepted and regular course of procedure.

Therefore, this court has jurisdiction under Section 237 (b) of the Act of February 13, 1925, to revise the said order of the Supreme Court of Pennsylvania.

The petitioners therefore pray that this court take jurisdiction and hear their petition so that the wrong committed may be righted.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
Counsel for the Petitioners.

Lima, Ohio,
February 14, 1945.